

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of a	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Hazelwood School District	)	File No. SLD-297140
Florissant, Missouri	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: October 20, 2009****Released: October 20, 2009**

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we grant an appeal by Hazelwood School District (Hazelwood) of a decision by the Universal Service Administrative Company (USAC) modifying a request for funding under the schools and libraries universal service support mechanism, also known as the E-rate program, on the grounds that some of the services requested by Hazelwood for funding year 2002 did not qualify as eligible services.<sup>1</sup> As explained below, we find that USAC's modification may have been based on a misunderstanding that, if corrected, would have made Hazelwood eligible for full funding under the E-rate program. We therefore grant this appeal and remand the underlying application to USAC for further action consistent with this order. We direct USAC to provide Hazelwood with a 15-day opportunity to provide additional documentation to USAC supporting the eligibility of the services in its funding request. To ensure that the underlying application is resolved expeditiously, we direct USAC to issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

**II. BACKGROUND**

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>2</sup> Applicants may seek support only for services eligible for support.<sup>3</sup> Each year,

<sup>1</sup> In this order, we use the term "appeal" to generally refer to a request for review of a decision issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). See Letter from Robert J. Wukitsch, Hazelwood School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed Apr. 15, 2003) (Request for Review).

<sup>2</sup> 47 C.F.R. §§ 54.501-503.

<sup>3</sup> See 47 C.F.R. § 54.504; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9003-9023, paras. 426-463 (1997) (*Universal Service First Report and Order*) (subsequent

the Commission determines the services that are eligible under the Commission's current rules and releases a list to help applicants select only services that are eligible for E-rate funding.<sup>4</sup> When USAC reviews an application and identifies an ineligible service, it will deny funding for that service.

3. Request for Review. In November 2001, Hazelwood submitted an FCC Form 470 application for posting to USAC's website to initiate the competitive bidding process for E-rate eligible services.<sup>5</sup> Hazelwood subsequently entered into a service contract with Southwestern Bell and filed its FCC Form 471 application for funding year 2002 (July 1, 2002 through June 30, 2003) with USAC for telecommunications services.<sup>6</sup> In April 2002, USAC approved Hazelwood's application in part but reduced Hazelwood's requested amount for funding request number (FRN) 787030 on the grounds that some of its requested services, Plexar stations and station line facilities, were ineligible for E-rate funding.<sup>7</sup> In June 2002, Hazelwood appealed USAC's decision, explaining that its contract with Southwestern Bell was for services only and that the "Plexar II Stations and Station Line Facilities" are services provided under the district's contract.<sup>8</sup> Hazelwood thus requested USAC to reconsider its decision and sought complete funding for FRN 787030.<sup>9</sup> In March 2003, USAC denied Hazelwood's appeal and affirmed its previous decision.<sup>10</sup> Hazelwood then filed the instant request for review with the Commission.<sup>11</sup> In its request for review, Hazelwood generally asserts that the Plexar stations are basic telephone service for support of instruction in the K-12 schools in the Hazelwood School District and, as such, are eligible services.<sup>12</sup>

### III. DISCUSSION

4. We grant Hazelwood's appeal. We find that USAC's modification of Hazelwood's funding request may have been based on a misunderstanding that, if corrected, would have made Hazelwood eligible for full funding under the E-rate program. Hazelwood contends that, in a phone call with a USAC representative after receiving the FCDL, it was told that the reduction was "probably" based on a USAC understanding that the requested "Plexar stations and station line facilities" constituted telephone equipment and not services.<sup>13</sup> Thus, in Hazelwood's appeal to USAC and the Commission, it clarified

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history omitted); Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806, at 17 (October 2000) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities, or uses).

<sup>4</sup> See 47 C.F.R. § 54.522.

<sup>5</sup> FCC Form 470, Hazelwood School District (posted Nov. 16, 2001).

<sup>6</sup> FCC Form 471, Hazelwood School District (filed Jan. 11, 2002) (Application No. 297140).

<sup>7</sup> See Letter from USAC, Schools and Libraries Division, to Robert Wukitsch, Hazelwood School District (dated Apr. 24, 2002) (Funding Commitment Decision Letter). Hazelwood originally requested a pre-discounted amount of \$140,891.04, but USAC reduced the requested pre-discounted amount to \$108,528.60. *Id.*; Letter from Robert J. Wukitsch, Hazelwood School District, to USAC, Schools and Libraries Division (dated June 7, 2002) (Appeal Letter).

<sup>8</sup> Appeal Letter.

<sup>9</sup> *Id.*

<sup>10</sup> See Letter from USAC, Schools and Libraries Division, to Robert Wukitsch, Hazelwood School District (dated Mar. 5, 2003) (Administrator's Decision on Appeal).

<sup>11</sup> See Request for Review.

<sup>12</sup> See *id.*

<sup>13</sup> Request for Review at 2.

that the Plexar stations and station line facilities are basic telephone service intended for day-to-day use for support of instruction in the schools of the Hazelwood School District, and thus qualify as eligible services under the E-rate program.<sup>14</sup> It thus appears, based on the record, that the services requested by Hazelwood may be eligible for funding under the E-rate program.

5. Moreover, there is no evidence here of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements. We thus direct USAC to provide Hazelwood with a 15-day opportunity to provide additional documentation to USAC supporting the eligibility of the services in its funding request. We note that those working on E-rate applications are often school administrators, technology coordinators, teachers, and librarians who may have little experience with distinguishing between eligible and ineligible services. This may be particularly true of staff at small school districts or libraries.<sup>15</sup> We thus believe that, by directing USAC to provide Hazelwood with an additional opportunity to demonstrate that the requested services are eligible for funding, we will ensure that Hazelwood is able to realize the intended benefits of the E-rate program. We therefore grant and remand the underlying application to USAC for further consideration in accordance with the terms of this order.<sup>16</sup>

6. To ensure that the underlying application is resolved expeditiously, we direct USAC to issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.<sup>17</sup> In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.<sup>18</sup> We remind USAC of its obligation to determine independently whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, and applicable statutes and to decline to disburse funds where USAC has evidence that this standard is not met.

7. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeal addressed herein, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such

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<sup>14</sup> See Appeal Letter; Request for Review at 2; <http://www.corp.att.com/gov/contracts/legacysbccontracts/maa/#plexar> (describing Plexar as a full-service telecommunications solution which offers businesses many of the features and functions of private branch exchange or key systems) (last visited Oct. 20, 2009).

<sup>15</sup> See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5323, para. 14 (2006) (*Bishop Perry Order*).

<sup>16</sup> We estimate that the appeal granted in this order involves an application for approximately \$140,891.04 in funding, \$53,179.01 of which has already been disbursed. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2009 (July 31, 2009). We thus determine that the action we take today should have a minimal effect on the universal service fund as a whole.

<sup>17</sup> In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

<sup>18</sup> Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### **IV. ORDERING CLAUSES**

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that Hazelwood's Request for Review IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of Hazelwood's remanded application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

#### **FEDERAL COMMUNICATIONS COMMISSION**

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau